

# EXHIBIT TTT



"Timothy J. Hogan"  
<hogant001@hawaii.rr.com>  
09/15/2004 03:42 PM

To 'Lex Smith' <lex@gte.net>, 'Karen Fine' <kfine@nchc.com>, 'Lyle Hosoda (E-mail 2)' <lsh@hosodalaw.com>  
"Eric Liebler (E-mail)" <eliebeler@kirkland.com>, "Robert S. Hertzberg (E-mail)" <Hertzber@pepperlaw.com>, "rwynne@kirkland.com" <rwynne@kirkland.com>, "Melissa Dulac (E-mail)" <MDulac@kirkland.com>, "Rick Cobb (E-mail)" <cobb@lrclaw.com>, "Damian Capozzola (E-mail)" <damian\_capozzola@la.kirkland.com>, "Karen L. S. Fine (E-mail)" <klfine@nchc.com>, "Wes Ching (E-mail)" <wjc@fmhc-law.com>, "Leroy Colombe (E-mail)" <lcolombe@ckdbw.com>  
cc  
bcc  
Subject RE: Settlement Offer Berry v. Hawaiian Express Service, Inc.- Fleming Companies, Inc. Bk

Correct.

-----Original Message-----

**From:** Lex Smith [mailto:lex@gte.net]  
**Sent:** Wednesday, September 15, 2004 9:17 AM  
**To:** Timothy J. Hogan; 'Karen Fine'; 'Lyle Hosoda (E-mail 2)'  
**Cc:** 'Eric Liebler (E-mail)'; 'Robert S. Hertzberg (E-mail)'; rwynne@kirkland.com; 'Melissa Dulac (E-mail)'; 'Rick Cobb (E-mail)'; 'Damian Capozzola (E-mail)'; 'Karen L. S. Fine (E-mail)'; 'Wes Ching (E-mail)'; 'Leroy Colombe (E-mail)'  
**Subject:** Re: Settlement Offer Berry v. Hawaiian Express Service, Inc.- Fleming Companies, Inc. Bk

And the cash payment you were proposing is \$2.5 million, correct?

----- Original Message -----

**From:** Timothy J. Hogan  
**To:** 'Karen Fine' ; 'Lex Smith (E-mail)' ; 'Lyle Hosoda (E-mail 2)'  
**Cc:** 'Eric Liebler (E-mail)' ; 'Robert S. Hertzberg (E-mail)' ; rwynne@kirkland.com' ; 'Melissa Dulac (E-mail)' ; 'Rick Cobb (E-mail)' ; 'Damian Capozzola (E-mail)' ; 'Karen L. S. Fine (E-mail)' ; 'Wes Ching (E-mail)' ; 'Leroy Colombe (E-mail)'  
**Sent:** Wednesday, September 15, 2004 8:45 AM  
**Subject:** RE: Settlement Offer Berry v. Hawaiian Express Service, Inc.- Fleming Companies, Inc. Bk

Rule 408 Settlement Communication

Karen:

I had the following email address klfine@nchc.com. I have made the change to klfine@nchc.com.

I think the idea is to settle the whole case, but the concept was to allow C&S to use the program in its wholesale business free of threatened claims of infringement. This would not include the right of any third parties to use on their own account. HEX, HTC, HLS could use it for C&S only. This will not permit independent use by these or other third parties.

We will leave this proposal open until September 27, 2004 at which time it will be withdrawn and we'll see what happens at the hearing. Because we read the Bankruptcy documents as terminating the Fleming indemnity fund in December, we believe that any settlement should be addressed well before that date.

Tim

-----Original Message-----

**From:** Karen Fine [mailto:kfine@nchc.com]

**Sent:** Wednesday, September 15, 2004 7:59 AM

**To:** Timothy J. Hogan; 'Lex Smith (E-mail)'; 'Lyle Hosoda (E-mail 2)'

**Cc:** 'Eric Liebler (E-mail)'; 'Robert S. Hertzberg (E-mail)'; 'rwynne@kirkland.com'; 'Melissa Dulac (E-mail)'; 'Rick Cobb (E-mail)'; 'Damian Capozzola (E-mail)'; 'Karen L. S. Fine (E-mail)'; 'Wes Ching (E-mail)'; 'Leroy Colombe (E-mail)'

**Subject:** RE: Settlement Offer Berry v. Hawaiian Express Service, Inc.- Fleming Companies, Inc. Bk

Tim, I haven't heard anything about a settlement proposal. Is this just to Lex's clients, or have I missed a communication regarding HEX? Also, you are still sending e-mail to klsfine, which is not my e-mail address--it was changed eight months ago. Send to [kfine@nchc.com](mailto:kfine@nchc.com). The old one is being forwarded, but that is going to stop at some point, and it is causing delay in my receiving your messages. Thanks.

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**From:** Timothy J. Hogan [mailto:hogant001@hawaii.rr.com]

**Sent:** Monday, September 13, 2004 1:25 PM

**To:** Lex Smith (E-mail); Lyle Hosoda (E-mail 2)

**Cc:** Eric Liebler (E-mail); Robert S. Hertzberg (E-mail); 'rwynne@kirkland.com'; Melissa Dulac (E-mail); Rick Cobb (E-mail); Damian Capozzola (E-mail); Karen L. S. Fine (E-mail); Wes Ching (E-mail); Leroy Colombe (E-mail)

**Subject:** Settlement Offer Berry v. Hawaiian Express Service, Inc.- Fleming Companies, Inc. Bk

Rule 408 Communication

Lex:

I still haven't heard back from you on our last settlement proposal. I thought I might try to get a settlement conference going. Because it is our hope to resolve matters related to the Bankruptcy including the indemnity issues, I thought we should get input from all the interested parties.

Please advise me of your clients' thoughts.

Tim Hogan